

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION INTO THE REASON-)
ABleness OF THE EARNINGS OF BRANDENBURG) CASE NO. 9859
TELEPHONE COMPANY, INC.)

O R D E R

On May 11, 1988, Brandenburg Telephone Company ("BTC") filed a Motion to Modify the Commission's May 4, 1988 Order of Procedure. The Commission's Order directed BTC to file its written testimony and response to Staff Report by June 10, 1988, directed the negotiation conference between BTC and Staff to commence on June 28, 1988, and established a hearing date of July 6, 1988, should a hearing be necessary. BTC has requested that it be permitted to file only a written response to Staff Report on June 10, 1988, that the negotiation conference begin June 17, 1988, and that Staff and BTC prefile testimony, if hearing is required, to be due 45 days after hearing is set, prefile rebuttal testimony, to be due 50 days after the hearing is set, and 10 days later convene the hearing.

In support of these proposed modifications, BTC states that its proposed schedule would permit BTC to avoid the time and expense of preparing for a hearing if one were not required and would afford BTC adequate time to take discovery, prefile testimony, and prepare for hearing should one be required.

In its Motion BTC mischaracterizes the nature of this investigation. The Commission initiated this investigation; it was not "brought by the Staff" as BTC suggests. The Staff is a participant to this proceeding, but does not bear the statutory burden of proof delineated in KRS 278.430, which on its face refers to standards of judicial review. BTC then cites Mayfield Gas Company v. Public Service Commission, Ky., 259 S.W.2d 8 (1953) for the proposition that "constitutional due process requires a fair and open hearing which shall include the utility's right to seasonably know the charges against it and the right to meet such charges by competent evidence." However, the Commission is of the opinion that these requirements have been maintained in this investigation. BTC has "known the charges against it" since the issuance of the Staff Report on January 15, 1988 and has more than sufficient time to "meet such charges by competent evidence" through filing its testimony in response to the Staff Report.

BTC asserts that the procedural schedule is prejudicial for several reasons, however, the Commission strongly disagrees and offers the following comments. For the purpose of investigation, it has been Commission practice to require utilities to file responses to information orders and to prefile testimony prior to negotiation conferences and/or hearings. Further, the Commission is of the opinion that BTC has been granted adequate and reasonable time for the preparation of a hearing, if a hearing is required. If BTC is of the opinion that the amount of time currently allocated between the negotiation conference and the hearing is insufficient, then the Commission encourages BTC to

file a motion for extension of time, to which the Commission will give due consideration.

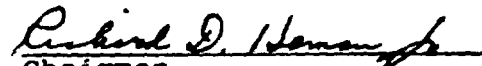
BTC further alleges that Staff is not required to prefile testimony and, therefore, that it must anticipate Staff's case. This is absolutely not the case. As the Staff has made abundantly clear on numerous occasions, it is the Commission practice that Staff Reports, such as the January 15, 1988 Report in this investigation, constitute the Staff's prefiled testimony.

The Commission, being advised, is of the opinion and finds that BTC's Motion to Modify the procedural schedule should be denied. For the reasons stated above, the Commission finds that the May 4, 1988 Order contains the schedule of events which is reasonable and should be followed.

BTC's Motion to Modify the procedural schedule be, and it hereby is DENIED.

Done at Frankfort, Kentucky, this 9th day of June, 1988.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Executive Director